

¶1 Chester F. appeals from the juvenile court's order terminating his parental rights to his four children, Danae, Marcus, Kevon, and Tyree, based on the length of time the children had resided outside of his home in court-ordered placements. The court found termination was appropriate under both A.R.S. § 8-533(B)(8)(a) and (c). Chester contends the evidence presented at the termination hearing was insufficient to support the termination order. For the following reasons, we affirm.

¶2 We will not disturb a juvenile court's order terminating a parent's parental rights unless the order is clearly erroneous, meaning it is unsupported by any reasonable evidence when that evidence is viewed in the light most favorable to upholding the order. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). The court, as the trier of fact in a termination proceeding, is in the best position to observe the parties, judge the credibility of witnesses, and make appropriate findings. *In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). Thus, we will not re-weigh the evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Statutory grounds for severance of a parent's rights must be established by clear and convincing evidence. A.R.S. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). A juvenile court must also find by a preponderance of the evidence that termination is in the child's best interests. *See* § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). In this

appeal, however, Chester contests only the sufficiency of the evidence supporting the court's determination that statutory grounds for termination existed.

¶3 On November 24, 2007, the Child Protective Services Division (CPS) of the Arizona Department of Economic Security (ADES) received a report that Tyree had suffered a skull fracture during a domestic dispute between Chester and the children's mother, Markisha. Upon investigation, ADES determined that "[n]either parent could provide a safe home or environment for the[] children"; it took custody of them and filed a dependency petition. On January 14, 2008, the juvenile court adjudicated the children dependent and approved a case plan of family reunification. Chester partially complied with the plan, which required him to submit to random drug testing, evaluation and treatment for substance abuse issues, and counseling for domestic violence and anger management and control issues.

¶4 On February 27, 2008, Chester was arrested for having committed aggravated domestic violence against Markisha on two occasions in January 2008. In a separate cause number, he pled guilty to a single count of attempted aggravated domestic violence and was placed on probation with the condition that he spend 120 days in jail. He was released from confinement in June 2008 and again engaged partially in reunification services offered by ADES. Approximately a month later, however, he was arrested again, and the state filed a petition to revoke his probation, alleging he had failed, among other things, to comply with the CPS case plan as required by the conditions of his probation. The superior court revoked his probation, and he was incarcerated again from approximately the end of July to December 2008.

¶5 The juvenile court held a permanency hearing on November 26, 2008. At that hearing, the court changed the case plan goal to severance and adoption and ordered ADES to file a motion to terminate Chester’s parental rights. Following a contested severance hearing in March and April 2009, the court terminated Chester’s parental rights on the grounds stated above.

¶6 On appeal, Chester argues the juvenile court’s finding that ADES had made diligent and reasonable efforts to provide appropriate reunification services to him was clearly erroneous because ADES had not provided him any services while he was incarcerated. In order to fulfill its obligation to provide reunification services, ADES was required to provide Chester the time and opportunity to participate in programs designed to help him become an effective parent. *See In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES was not required to provide every conceivable service or ensure that Chester engaged in the services it offered. *See id.* Nor was it required to provide services that would have been futile. *See Mary Ellen C.*, 193 Ariz. 185, ¶ 34, 971 P.2d at 1053.

¶7 It is undisputed that ADES instituted appropriate services to Chester immediately after the children were taken into care. The juvenile court found he had been offered the following services: “referrals to Arizona Families First, random urinalysis testing, substance abuse groups, . . . intensive outpatient treatment, Family Drug Court, psychological evaluation, anger management classes, domestic violence groups, individual counseling, parenting classes, parent aide services, supervised visitation and professional

case management.” It is also undisputed that Chester was fully able to participate in these services for approximately eight months while he was not incarcerated. The juvenile court reasonably could have found that Chester had a reasonable opportunity to engage in and benefit from reunification services while he was not incarcerated. *Cf. In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (“window of opportunity for remediation” need not be left “open indefinitely”).

¶8 Chester asserts ADES “ensured his lack of participation” by failing to offer services to him while he was incarcerated. First, as ADES correctly points out, the CPS case manager stated in a progress report to the juvenile court that she had given Chester a list of classes, including anger management and parenting classes, that were available through the county jail. The court, therefore, reasonably could have determined that these additional services also had been available to Chester, at least during his first incarceration. No evidence showed Chester took advantage of these programs, requested ADES help him do so, or explained his failure to participate. But more importantly, Chester, not ADES, was responsible for his incarceration. Thus, it was his own behavior toward Markisha and his failure to obey the terms of his probation that caused his inability to participate in services through ADES. The evidence sufficiently supported the court’s finding that ADES had made “diligent and reasonable efforts to provide appropriate reunification services” to Chester.

¶9 Next, Chester argues the juvenile court erred by finding there was a substantial likelihood he would be incapable of appropriately parenting in the near future. He asserts “[t]here was no clear and convincing evidence—and certainly no current evidence—that

[Chester] had not resolved the problems that gave rise to the out of home placement or that he would not be capable of exercising proper parental control in the near future.” Again, we disagree.

¶10 As Chester concedes, CPS’s involvement with his family was based in part on the history of domestic violence between him and Markisha and his apparent inability to manage his anger. He attempted to assault Markisha during the pendency of this action, resulting in his incarceration. And, he does not challenge the juvenile court’s finding that he failed to participate in anger management classes when he was not incarcerated. Thus, contrary to Chester’s assertion, sufficient evidence supported the court’s conclusion that Chester had failed to remedy the circumstances that had caused his children to be placed out of his home for over fifteen months.¹ See § 8-533(B)(8)(c).

¶11 The juvenile court relied on the testimony of psychologist Ralph Wetmore for its determination that Chester would not be capable of exercising proper and effective parental care and control in the near future. It noted Wetmore had “diagnosed [Chester] as suffering from alcohol abuse, partner relational problems” and a personality disorder with “anti-social and histrionic features.” The court accepted Wetmore’s opinion that, because Chester had not successfully participated in case plan services that had been recommended to ameliorate these conditions, the conditions would continue to adversely affect Chester’s ability to discharge safely his parenting responsibilities. Chester contends the court placed

¹It is undisputed that the children had been placed outside the home for approximately seventeen months by the time of the termination hearing.

too much weight on Wetmore's opinion, but as stated above, the juvenile court, not this court, was in the best position to weigh the evidence. *See Pima County No. 93511*, 154 Ariz. at 546, 744 P.2d at 458. The court did not err in concluding that the evidence clearly and convincingly showed Chester would not be able to exercise proper and effective parental care and control in the near future. *See* § 8-533(B)(8)(c).

¶12 Accordingly, we conclude sufficient evidence supported the juvenile court's determination that termination of Chester's parental rights was warranted under § 8-533(B)(8)(c). Because only one of the grounds in § 8-533(B) is required for termination of the parent-child relationship, *see Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205, we need not address Chester's argument regarding the sufficiency of the evidence to support termination under § 8-533(B)(8)(a). The court's order terminating Chester's parental rights is affirmed.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge